

## **Title 16, PHYSICAL THERAPY BOARD OF CALIFORNIA**

NOTICE IS HEREBY GIVEN that the Physical Therapy Board of California is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Washington Inn Oakland, 495 Tenth Street, Oakland, California 94607, Friday, November 7, 2003 at 9:00 am. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Physical Therapy Board of California at its office not later than 5:00 p.m. on November 3, 2003 or must be received at the hearing. The Physical Therapy Board of California, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Section 2615 of the Business and Professions Code, and to implement, interpret or make specific section 2660.2 the Physical Therapy Board of California is considering changes to Division 13.2 of Title 16 of the California Code of Regulations as follows:

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

#### **1) Adopt section 1399.16**

Business and Professions Code section 2660.2 authorizes the Board to issue a probationary license to any applicant for a license who is guilty of unprofessional conduct but who has met all other requirements for licensure.

Section 1398.4 of the California Code of Regulations delegates to the executive officer, or in his or her absence the president and vice-president, all functions necessary to the dispatch of business of the Board in connection with investigative and administrative proceedings under the jurisdiction of the board, except for those powers reserved exclusively to the "agency itself" under the Administrative Procedures Act. While the intent of the statute (section 2660.2 of the Business and Professions Code) was for the executive officer to continue to make the initial licensure decision, Section 2660.2 of the Business and Professions Code states the Board may in its sole discretion issue a probationary license to any applicant for licensure who is guilty of unprofessional conduct but who has met all other requirements for licensure.

The use of the phrase "the Board in its sole discretion" could raise an issue as to whether the Board members must approve all initial probationary licenses. Approval by the Board members of the initial probationary license would be in conflict if the probationary license were appealed and the Board members had to make a decision on an administrative law judge's Proposed Decision.

Further, section 2660.2 provides when an initial probationary license may be issued and specifies some possible restrictions, but does not place any limitation on restrictions or guidelines such as the length of probation. Applicants will be provided with additional

knowledge of what restrictions may be placed on a license by including a reference to the Board's Disciplinary Guidelines (section 1399.15) in the proposed regulation.

The addition of Section 1399.16 will clarify the intent of section 2660.2 by delegating to the executive officer the authority to issue an initial probationary license and to require the use of the Board's Disciplinary Guidelines as a guideline for the issuance of an initial probationary license.

#### FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

#### Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination:  
None

#### Impact on Jobs/New Businesses:

The board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Private Persons or Entities: The Physical Therapy Board of California is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

#### EFFECT ON SMALL BUSINESS

The Physical Therapy Board of California has determined that the proposed regulations would not affect small businesses since the responsibility of compliance is placed with the individual licensee.

### CONSIDERATION OF ALTERNATIVES

The Physical Therapy Board of California must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome on affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

### INITIAL STATEMENT OF REASONS AND INFORMATION

The board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

## TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of the reasons and all of the other information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Physical Therapy Board of California at 1418 Howe Avenue, Suite 16, Sacramento, California 95825.

## AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

## CONTACT PERSON

Inquiries concerning the proposed administrative action or the substance of the proposed regulations may be addressed to:

Elsa Ybarra  
1418 Howe Avenue, Suite 16  
Sacramento, CA 95825  
(916) 561- 8200 Ext. 8262  
(916) 263-2560 – Fax Number  
[Elsa\\_Ybarra@dca.ca.gov](mailto:Elsa_Ybarra@dca.ca.gov)

The backup contact person is:

Steve Hartzell  
1418 Howe Avenue, Suite 16  
Sacramento, CA 95825  
(916) 561-8200 Ext. 8250  
(916) 263-2560 – Fax Number  
[Steve\\_Hartzell@dca.ca.gov](mailto:Steve_Hartzell@dca.ca.gov)

Inquiries concerning the substance of the proposed regulations may be directed to Elsa Ybarra at (916) 561-8200 Ext. 8260.

Website Access:      Materials regarding this proposal can be found at [www.ptb.ca.gov](http://www.ptb.ca.gov).